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13  
 14 UNITED STATES DISTRICT COURT  
 15  
 NORTHERN DISTRICT OF CALIFORNIA,  
 16  
 SAN FRANCISCO DIVISION

17  
 18 GUARDANT HEALTH, INC.,  
 19 Plaintiff and Counterclaim-  
 20 Defendant,  
 21 vs.  
 22 NATERA, INC.,  
 23 Defendant and Counterclaim-  
 Plaintiff.

Case No. 3:21-cv-04062-EMC  
**NATERA INC.'S SIXTH  
 AMENDED TRIAL WITNESS  
 LIST**

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 26  
 27  
 28

1 Pursuant to Fed. R. Civ. P. 26(a)(3)(B), Natera submits this amended list of witnesses it will  
 2 or may call to testify at trial live or by deposition. The inclusion of a witness on this list does not  
 3 require Natera to call that witness to testify, and does not imply or establish that Natera has the  
 4 power to compel the live testimony of that witness or make that witness available to the opposing  
 5 party. Natera expressly reserves the right to call any witness identified by Guardant, whether or not  
 6 listed on Natera's list below. Natera also expressly reserves the right to call any witness for purposes  
 7 of rebuttal, impeachment, or authentication of a document. Natera reserves all rights to and expects  
 8 to supplement this disclosure including the expected length of testimony before the parties' agreed-  
 9 upon date for filing pretrial materials.

10  
 11 Subject to, and without waiving the foregoing rights and objections (including those asserted  
 12 in pre-trial filings), Natera identifies the following list of trial witnesses it may call to testify before  
 13 the jury:

14  
 15 **I. NATERA'S WILL CALL WITNESSES**

16 **A. Fact Witnesses**

17 Natera expects to call the following fact witnesses, either live or by deposition,<sup>1</sup> at trial:

18 1. **Alexey Aleshin** (live): Issues related to research, development, testing, validation,  
 19 use, and/or methodology of Signatera; Natera's technology, innovations and  
 20 background; Natera's marketing/promotion of Signatera and tumor-informed  
 21 approaches to cancer detection; research, clinical studies and publications relating to  
 22 Signatera, including Natera's involvement, if any; Natera's collaborations and  
 23 partnerships related to Signatera; statements made about Signatera and/or Reveal by  
 24 Natera in marketing/promotion, and why those representations are not false and/or  
 25 misleading; statements made about Signatera and/or Reveal by Guardant in  
 26 marketing/promotion, and why those representations are false and/or misleading;  
 27 Natera's efforts to educate the medical community about Signatera; the Parikh study  
 28 and publication and Natera's commentary regarding that study and/or publication;  
 the Reinert study and publication and Guardant's commentary regarding that study  
 and/or publication; other topics discussed in his deposition, including any topics on

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<sup>1</sup> The nature of the testimony for those called by deposition is more specifically identified in the deposition designations.

1 which he was designated as a 30(b)(6) witness. Preliminary Time Allocation: 60  
 2 min.

3 2. **Steven Chapman** (live): Issues related to corporate structure, organization,  
 4 investors, ownership and management of Natera; Natera's history, innovations and  
 5 background; issues related to Natera's marketing/promotion/advertising of  
 6 Signatera; harm suffered by Natera as a result of Guardant's false and misleading  
 7 advertising statements; statements made about Signatera and/or Reveal by Natera in  
 8 marketing/promotion, and why those representation are not false and/or misleading;  
 9 other topics discussed in his deposition, including any topics on which he was  
 10 designated as a 30(b)(6) witness. Preliminary Time Allocation: 60 min.

11 3. **Helmy Eltoukhy** (live): Issues related to corporate structure, organization, investors,  
 12 ownership and management of Guardant; Guardant's history and background; issues  
 13 related to Guardant's marketing and promotion of Reveal and his role involving the  
 14 same; his involvement as final decisionmaker as chief executive; Guardant's conduct  
 15 as it relates to scientific research; public comments he made regarding Medicare  
 16 reimbursement and Reveal's alleged commercial success/growth; as well as the  
 17 topics discussed in his deposition. Preliminary Time Allocation: 60 min.

18 4. **Solomon Moshkevich** (live): Issues related to research, development, testing,  
 19 validation, use, and/or methodology of Signatera; Natera's history, innovations, and  
 20 background; Natera's marketing/promotion of Signatera; Signatera sales, pricing,  
 21 and customers; research and clinical studies and publications relating to Signatera,  
 22 including Natera's involvement, if any; Natera's collaborations and partnerships  
 23 related to Signatera; statements made about Signatera and/or Reveal by Natera in  
 24 marketing/promotion, and why those representations are not false and/or misleading;  
 25 statements made about Signatera and/or Reveal by Guardant in  
 marketing/promotion, and why those representations are false and/or misleading; the  
 Parikh study and publication and Natera's commentary regarding that study and/or  
 publication; the Reinert study and publication and Guardant's commentary regarding  
 that study and/or publication; Natera's efforts to educate the medical community  
 about Signatera; other topics discussed in his deposition, including any topics on  
 which he was designated as a 30(b)(6) witness. Preliminary Time Allocation: 75  
 min.

26 5. **Aparna Parikh** (live or by deposition): Issues related to her collaboration(s) with  
 27 Guardant to develop, analyze and publish clinical validation data for Reveal;  
 28 communications with Guardant related to the Parikh Study or to this litigation; issues  
 related to the substance of her July 1, 2024 Expert Report; the authenticity and  
 admissibility of documents produced by Aparna Parikh and/or Massachusetts  
 General Hospital ("MGH") in this case; as well as topics discussed in Dr. Parikh's  
 depositions. Preliminary Time Allocation: 60 min.

6. **Matthew Rabinowitz** (live): Dr. Rabinowitz's background as founder of Natera, the  
 context and background of the founding of Natera and of Natera's technology  
 development that led to and/or relates to Signatera. Preliminary Time Allocation: 45  
 min.

1       7. **Kevin Masukawa** (live or by deposition): issues related to Natera's  
 2 marketing/promotion/advertising of Signatera; Natera's budgets, spend, and  
 3 expenses for marketing/promotion/advertising related to Signatera and oncology  
 4 generally; efforts undertaken by Natera related to correcting, responding to and/or  
 5 mitigating Guardant's false and misleading statements about Reveal and/or  
 6 Guardant, and the expenses incurred related thereto; statements made about  
 7 Signatera and/or Reveal by Natera in marketing/promotion; and why those  
 8 representation are not false and/or misleading; Natera's efforts to educate the medical  
 9 community about Signatera and MRD assays generally; other topics discussed in his  
 10 deposition, including any topics on which he was designated as a 30(b)(6) witness.

11      **B. Expert Witnesses**

12      Natera expects to call the following expert witnesses live at trial:

13      1. **Dr. Rebecca Betensky** (biostatistics expert): the scope of testimony was previously  
 14 disclosed in Dr. Betensky's expert report and deposition, but generally her testimony  
 15 will include her background, opinions on clinical study design, biostatistics  
 16 methodology, and performance as they relate to the Parikh Study, as well as the  
 17 statistical conduct relating to that study; subject matter of the claims made by  
 18 Guardant, such as sensitivity, specificity, positive predictive value, negative  
 19 predictive value, statistical significance, statistical power, and appropriate methods  
 20 for data analysis and evaluation; opinions offered in rebuttal to Guardant's experts.  
 21 Preliminary Time Allocation: 45 min.

22      2. **Dr. Susan McDonald** (oncology marketing expert): the scope of testimony was  
 23 previously disclosed in Dr. McDonald's expert report and deposition, but generally  
 24 her testimony will include her background, and rebuttal opinions to Mr. Sowers'  
 25 opinions. Preliminary Time Allocation: 45 min.

26      3. **Dr. Michael Metzker** (scientific expert): the scope of testimony was previously  
 27 disclosed in Dr. Metzker's expert reports and deposition, but generally his testimony  
 28 will include his background, opinions relating to statements made about Signatera  
 and/or Reveal by Natera in marketing/promotion, and why those representations are  
 not false and/or misleading; opinions relating to statements made about Signatera  
 and/or Reveal by Guardant in marketing/promotion, and why those representations  
 are false and/or misleading; opinions relating to the Parikh study; and opinions  
 offered in rebuttal to Guardant's experts. Preliminary Time Allocation: 60 min.

29      4. **Dr. Jeffery Stec** (damages expert): the scope of testimony was previously disclosed  
 30 in Dr. Stec's expert reports and deposition, but generally his testimony will include  
 31 his background, an analysis of the damages owed to Guardant based on Guardant's  
 32 claims, and an analysis of the damages owed to Natera based on Natera's claims; and  
 33 his rebuttal opinions to Mr. Malackowski's opinions. Preliminary Time Allocation:  
 34 75 min.

1 **II. NATERA'S MAY CALL WITNESSES**

2 **A. Fact Witnesses**

3 Natera may call the following fact witnesses, either live or by deposition,<sup>2</sup> at trial:

- 4 1. **Kimberly Banks** (live or by deposition): issues related to Guardant's influence over  
5 the Parikh Study; the unblinding of Parikh results to Guardant; issues related to the  
6 mechanism and performance of Reveal and the data on Reveal's clinical  
7 performance; and the topics discussed in Ms. Banks's deposition, including any  
topics on which she was designated as a 30(b)(6) witness.
- 8 2. **Ryan Corcoran** (by deposition): issues related to his collaboration with Guardant to  
9 develop, analyze and publish clinical validation data for Reveal; communications  
with Guardant relating to this litigation; as well as the topics discussed in Dr.  
Corcoran's deposition.
- 10 3. **Mark McCoy** (live or by deposition): issues related to the topics discussed in Mr.  
11 McCoy's deposition, including any topics on which he was designated as a 30(b)(6)  
12 witness.
- 13 4. **Justin Odegaard** (live or by deposition): issues related to the mechanism and  
14 performance of Reveal and the data analysis underlying the Parikh Study, as well as  
15 the topics discussed in Dr. Odegaard's deposition, including any topics on which he  
16 was designated as a 30(b)(6) witness.
- 17 5. **Kristin Price** (live or by deposition): issues related to the Parikh Study and the  
18 related collaborations between MGH and Guardant to develop, analyze and publish  
19 clinical validation data for Reveal; issues related to Guardant's marketing materials  
20 for Reveal; as well as the topics discussed in Ms. Price's deposition, including any  
21 topics on which she was designated as a 30(b)(6) witness.
- 22 6. **Victoria Raymond** (live or by deposition): issues related to Guardant's statements  
23 made about Signatera and/or Reveal in marketing/promotion, and why those  
24 representation are false and/or misleading; the Parikh Study and the related  
25 collaborations between MGH and Guardant to develop, analyze and publish clinical  
26 validation data for Reveal; as well as the topics discussed in Ms. Raymond's July 28,  
27 2022 deposition, including any topics on which she was designated as a 30(b)(6)  
28 witness.

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25 <sup>2</sup> Natera reserves the right to play deposition designations from Guardant witnesses, including its  
26 designated 30(b)(6) witnesses pursuant to Fed. R. Civ. P. 32(a)(3); *see also Oracle USA, Inc. v.*  
27 *Rimini St., Inc.*, No. 2:10-CV-00106-LRH, 2015 WL 5089779, at \*3 (D. Nev. Aug. 27, 2015)  
(finding “defendants’ request to exclude videotaped deposition testimony contradicts the plain  
language of Rule 32(a)(3) ... Rimini’s witnesses ... were deposed as Rule 30(b)(6) designees. Thus,  
their depositions are allowable under Rule 32(a)(3) for any purpose, even if the witness is available  
and will testify at trial”). Natera objects to any attempt by Guardant to deprive Natera of this right,  
as well as any attempt by Guardant to prejudice Natera’s presentation of its case-in-chief.

- 1        7. **Thereasa Rich** (live or by deposition): issues related to Guardant's statements made  
2        about Signatera and/or Reveal in marketing/promotion, and why those  
3        representations are false and/or misleading; issues related to the mechanism and  
4        performance of Reveal and the data on Reveal's clinical performance; as well as the  
5        topics discussed in Ms. Rich's deposition, including any topics on which she was  
6        designated as a 30(b)(6) witness.
- 5        8. **Shruti Sharma** (live): issues related to Natera's communications and collaboration  
6        with Aarhus University, including regarding the preparation and publication of the  
7        Reinert study.
- 7        9. **Nitin Sood** (by deposition): issues related to the research, development, testing, and  
8        marketing of Reveal, as well as concerning Guardant's collaboration and  
9        communication with the authors of the Parikh study; communications with Guardant  
10       relating to this litigation; as well as the topics discussed in Mr. Sood's deposition.
- 10       10. **AmirAli Talasaz** (live or by deposition): issues related to the Parikh Study and the  
11       related collaborations between MGH and Guardant to develop, analyze and publish  
12       clinical validation data for Guardant Reveal, and development, testing, and  
13       marketing of Reveal, as well as concerning Guardant's collaboration and  
14       communication with the authors of the Parikh study; Guardant's marketing;  
15       Guardant's finances, including projections and budgets; Guardant's purported  
16       damages, including its purported future corrective advertising estimates; as well as  
17       the topics discussed in Dr. Talasaz's deposition, including any topics on which he  
18       was designated as a 30(b)(6) witness.
- 16       11. Custodian of Records for The General Hospital Corporation d/b/a Massachusetts  
17       General Hospital ("MGH") (live): authenticity and admissibility of documents  
18       produced by MGH in this case.
- 18       12. Custodian of Records for Clinical Cancer Research ("CCR") (live): authenticity and  
19       admissibility of documents produced by CCR in this case.
- 19       13. Custodian of Records for Guardant Health (live): authenticity of documents  
20       produced by Guardant Health in this case.

1 DATED: November 4, 2024

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